Next Round of NgTLDs / Subsequent Procedures
The 38 Pending SubPro Recommendations

Update to the At-Large CPWG

Justine Chew
ALAC Liaison to the GNSO

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Background

- At ICANN76, ICANN Board *inter alia*:
  - Adopted 98 recommendations from the Final Report of the New gTLD Subsequent Procedures PDP (SubPro Recs)
  - Marked a remaining 38 SubPro Recs as “pending” *citing* concerns
  - Requested from GNSO Council, plans for:
    - Resolve the 38 Pending SubPro Recs;
    - How to handle closed generics for the next round of new gTLDs; and
    - What work of the EPDP on IDNs impacts the next AGB etc.
- Since ICANN76:
  - GNSO Council Small Team on SubPro has been working with Board SubPro Caucus members to resolve Board concerns on 38 SubPro Pending Recs

As at 14 August 2023

- A Clarifying Statement* covering and addressing:

SubPro Topic	Relevant Recs	Summary of Board Concern
Topic 3: Applications Assessed in Rounds	3.1, 3.2, 3.5, 3.6, 3.7	Inflexibility of being held to rounds
Topic 6: Registry Service Provider Pre-Evaluation	6.8	Roles of IRT & ICANN org seem to be reversed
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	9.1, 9.4, 9.8, 9.9, 9.10, 9.12, 9.13, 9.15	Uncertainty/risks in ICANN's ability to enforce PICs/RVCs per mission
Topic 26: Security and Stability	26.9	Uncertainty/risks in ICANN's ability to enforce PICs/RVCs per mission
Topic 29: Name Collision	29.1	Not concern, merely awaiting NCAP Study 2 Report
Topic 30: GAC Consensus Advice and GAC Early Warning	30.7	Use of RVCs to address GAC EW / Advice (or even other comments)
Topic 31: Objections	31.16, 31.17	Use of PICs/RVCs to address objections
Topic 34: Community Applications	34.12	Possibly required to publish CPE provider confidential info for public comment
Topic 35: Auctions	35.3, 35.5	Mention of "private auctions" should not endorse/prohibit private auctions

*See: https://community.icann.org/display/atlarge/GNSO+Liaison+Report%2C+post-Oct+2021#Aug2023-MOI_Aug2023

As at 14 August 2023

- What's left? Board signaled non-adoption of:

SubPro Topic	Relevant Recs	Summary of Board Concern
Topic 9: Registry Voluntary Commitments / Public Interest Commitments	**9.2**	Waiver of Spec 11 3(a) & 3(b) for single registrant TLDs could lead to unforeseen harm on different business models
Topic 17: Applicant Support	**17.2**	Open-ended nature of potential payees and potential fiduciary concerns
Topic 18: Terms and Conditions	18.1	Does not want to unduly restrict ICANN's discretion to reject an application in circumstances that fall outside the specific grounds set out in the recommendation.
Topic 18: Terms and Conditions	18.3	Covenant not to sue subject to challenge/ appeal mechanism leading to undue legal exposure (tied to Recs 32.1, 32.2, 32.10)
Topic 22: Registrant Protections	22.7	Exemption of COI means no EBERO funds – better to be case-by-case than blanket exemption (similar to Rec 9.2)
Topic 24: String Similarity	24.3, 24.5	Enforcing "intended use" of singular-plural through PICs may fall outside ICANN mission
Topic 32: Limited Challenge / Appeal	32.1, 32.2, 32.10	Co-existence with Bylaw-driven Accountability Mechanisms, duplication, add unnecessary cost and delay

What Next?

- GNSO Council to:
  - Consider, vote on Clarifying Statement on 24 August
  - Instructing Small Team on remaining work
    - Operating Procedure section 16
    - Supplementary Recommendation

- ALAC / At-Large to:
  - Continue monitoring developments
  - Provide input to Small Team / GNSO Council, especially on:
    - Rec 17.2 – Applicant Support
    - Rec 9.2 – Waiver of Spec 11 3(a) & 3(b) for single registrant TLDs